

REMARKS

Claims 1-4, 6-52, and 54-104 are pending in this application. Non-elected claims 31-39, 43-47, 86-94, 98-102, and 104 have been withdrawn from consideration by the Examiner. By this Amendment, claim 11 is amended to correct a minor grammatical informality and claim 70 is amended to better conform to U.S. practice. Support for the amendments to claims 11 and 70 may be found in original claims 11 and 70. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

I. Rejection Under 35 U.S.C. §103

The Office Action rejects claims 1-4, 6-30, 40-42, 48-52, 54-85, 95-97, and 103 under 35 U.S.C. §103(a) as having been obvious over U.S. Patent No. 5,843,417 to Hanna et al. ("Hanna"), in view of U.S. Patent No. 6,432,389 to Hansenne et al. ("Hansenne"), and U.S. Patent No. 6,207,175 to Lebreton ("Lebreton"). Applicants respectfully traverse the rejection for at least the following reasons.

Claims 1 and 49 require "[a] fluid cosmetic composition in the form of a water-in-oil emulsion comprising . . . at least two polymethyl methacrylates having different densities." The applied references are not properly combinable in a manner that would have produced the claimed cosmetic composition comprising at least two polymethyl methacrylates having different densities.

Hanna is directed to cosmetic compositions that are water-in-oil emulsions having waterproof, long wear, and transfer resistance properties. See abstract. Hanna discloses that such cosmetic compositions may be formulated as a liquid foundation, a concealer, a mascara, an eyeliner, a blush, and so on. See column 1, lines 32-35.

Hanna does not disclose a composition comprising even one polymethyl methacrylate, much less two polymethyl methacrylates having different densities. The Office Action

acknowledges that Hanna does "not specifically teach the presence of polymethyl methacrylate particles in the composition." See page 4. Instead, Hanna discloses that fillers in its cosmetic compositions include "talc and other fillers known in the cosmetic art." See column 6, lines 39-43. Yet the Office Action asserts that Hanna discloses cosmetic compositions that would have been modified by an ordinarily skilled artisan to comprise not one--but two--polymethyl methacrylates in view of Hansenne and Lebreton. See Office Action at page 5.

However, an ordinarily skilled artisan would not have had any reason or rationale to do so. None of the applied references disclose compositions using two polymethyl methacrylates or provide any reason or rationale that would have led an ordinarily skilled artisan to believe that there would have been any benefit to formulating a cosmetic composition comprising two polymethyl methacrylates.

Additionally, Hansenne and Lebreton are directed to cosmetic compositions that are different from those of Hanna, as well as different from each other, in several important respects. In view of such differences, an ordinarily skilled artisan would not have even attempted to combine the references.

Hansenne discloses topically applicable cosmetic compositions for UV-photoprotection of human skin, hair, and/or scalp--i.e., sunscreen compositions--that comprise an amount of a methyl methacrylate crosspolymer effective to reduce the greasiness and diffusion of the sunscreen compositions, as well as to improve the dryness of the sunscreen compositions. See abstract and column 2, lines 30-35. Hansenne discloses that its compositions are preferably lotions and only generally discloses that they may also be provided in other forms (including various types of emulsions). See column 7, lines 34-41.

At most, an ordinarily skilled artisan would understand Hansenne to teach that a methyl methacrylate crosspolymer can be provided to otherwise greasy and easily diffusable

compositions, such as sunscreens in lotion form, to impart dryness to such compositions by adsorbing oil. In other words, Hansenne teaches that a methyl methacrylate crosspolymer can be provided to adsorb oils in oil-based compositions to impart dryness. The specification also describes this as a known use for a polymethyl methacrylate. See paragraph [0005].

However, an ordinarily skilled artisan would not have modified a composition disclosed by Hanna in view of Hansenne because there is no reason to expect, nor does the Office Action make any finding of fact to show, that Hanna discloses a composition (in the form of a water-in-oil emulsion) that is excessively greasy. Thus, there would have been no reason to modify a composition disclosed by Hanna to include the methyl methacrylate crosspolymer disclosed by Hansenne to adsorb oil. Moreover, an ordinarily skilled artisan would not have had the benefit of Applicants' unexpected discovery that the presence of polymethyl methacrylate in a cosmetic composition in the form of a water-in-oil emulsion improves the application properties of the cosmetic composition, including providing superior slip properties to more uniformly distribute the composition over the entire surface to be made up. See paragraph [0006].

Additionally, an ordinarily skilled artisan would not have modified the composition of Hanna in view of Lebreton. Lebreton discloses a cosmetic lotion that comprises an aqueous phase and a powdered phase in which the powdered phase comprises at least one active powder and hollow particles of an acrylic or methacrylic polymer or copolymer. See abstract. Lebreton's lotion is used for caring for, clearing, removing make-up from and/or coloring the skin, mucous membranes and/or scalp. *Id.* Lebreton's lotion consists entirely of an aqueous phase and a powdered phase in its particularly preferred embodiment, and is completely "devoid of oils." See column 2, lines 59-61. The disclosure of Lebreton is therefore unrelated to cosmetic compositions that have an oil phase or are oil-based, such as those

disclosed by Hanna and Hansenne. Thus, an ordinarily skilled artisan would not have had any reason or rationale to combine the teachings of Lebreton with those of Hanna and Hansenne.

Additionally, from the facts discussed above, it is clear that Lebreton does not use an acrylic or methacrylic polymer to adsorb oil in its compositions. Instead, Lebreton discloses that providing the powdered phase with an acrylic or methacrylic polymer prevents this phase of the lotion from clogging. See column 2, lines 38-46. The problem of clogging is specific to lotions that consists of an aqueous phase and a powdered phase, where the lotion is designed to separate into these two phases by settling and is designed to be mixed before use. See Lebreton at column 1, lines 33-58 ("... the powdered phase has a tendency to become clogged at the bottom of the bottle and to form a "cake", which often makes it difficult to resuspend the powder during use.").

Thus, an ordinarily skilled artisan would understand Lebreton to only teach that providing an acrylic or methacrylic polymer to a powdered phase would prevent clogging when the powdered phase of a lotion is separated from the aqueous phase. However, this teaching of Lebreton is irrelevant to the compositions disclosed by Hanna and Hansenne because neither Hanna nor Hansenne disclose compositions that are subject to clogging--the problem Lebreton attempts to solve. That is, Hanna and Hansenne do not disclose a composition that is designed to separate into an aqueous phase and a powdered phase, or any other composition that would be subject to similar clogging.

For at least these reasons, an ordinarily skilled artisan would not have had any reason or rationale to attempt to combine the applied references to develop the claimed cosmetic composition because the teachings of Hansenne and Lebreton are unrelated to solving any problem that has been shown to be present in a composition of Hanna. Additionally, because the applied references are completely silent on any benefit to a cosmetic composition comprising two polymethyl methacrylates, especially two polymethyl methacrylates having

different densities, an ordinarily skilled artisan would not have arrived at the claimed cosmetic composition.

Accordingly, the applied references would not have rendered obvious claims 1 and 49. Claims 2-4, 6-30, 40-42, 48, 50-52, 54-85, 95-97, and 103 variously depend from claims 1 and 49 and, thus, also would not have been rendered obvious by the applied references for at least the same reasons. Reconsideration and withdrawal of the rejection are respectfully requested.

II. Rejoinder

Non-elected claims 31-39, 43-47, 86-94, 98-102, and 104 variously depend from claims 1 and 49 and, thus, should be rejoined and examined for patentability upon allowance of claims 1 and 49. Because claims 1 and 49 are believed to be allowable for at least the reasons discussed above, Applicants respectfully request withdrawal of the restriction requirement, and rejoinder, examination, and allowance of claims 31-39, 43-47, 86-94, 98-102, and 104.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of this application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Attachment:
Petition for Extension of Time

Date: December 17, 2009

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